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ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 9th July 1953

S.R.O. 1459.—Whereas the election of Shri Basawa Singh, as a member of the Legislative Assembly of the State of PEPSU, from the Dhilwan Constituency of that Assembly (now dissolved), has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Lachhman Singh, son of Shri Dhanna Singh, V. & P.O. Lakhanke Padde, Tehsil and District Kapurthala;

And whereas, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, KAPURTHALA, AT PATIALA

V. B. Sarwate, *Chairman.*

S. B. Kartar Singh, *Member.*

Jia Ram Saxena, *Member.*

ELECTION PETITION No. 204 OF 1952

Lachhman Singh s/o Dhanna Singh, V. & P.O. Lakhanke Padde, Tehsil and District Kapurthala—*Petitioner.*

Versus

1. S. Basawa Singh s/o S. Harnam Singh, village & P.O. Dhaliwal Bet, Tehsil and district Kapurthala;
2. S. Kehar Singh, s/o S. Mohinder Singh, village & P.O. Dhilwan, Tehsil and district Kapurthala;
3. S. Sochet Singh, s/o S. Harnam Singh, near Police-Lines, Kapurthala City;
4. S. Mohinder Singh, s/o S. Natha Singh, V. & P.O. Dhilwan, Tehsil and district Kapurthala;
5. Inder Singh, s/o Nathu, village & P.O. Bhandal Bet, Tehsil and districts Kapurthala;
6. Bibi Amar Kaur, w/o S. Makhan Singh, village & P.O. Dyalpur, Tehsil and district Kapurthala, and
7. Shri Jagjit Singh Bhandari, s/o Shri Kalu Ram, Ward No. C-9, House No. 540, Kapurthala City—*Respondents.*

ORDER DELIVERED ON 30-6-1953

In the last general elections to the Pepsu Legislative Assembly the respondent No. 1 S. Basawa Singh was declared returned from the Dhilwan Constituency. The petitioner, the seven respondents and one Jagir Singh who is now dead had all filed their nomination papers but the Returning Officer rejected the nomination of the petitioner, the respondents 6 and 7 and Jagir Singh. Respondents 4 and 5 withdrew their candidature under S. 37 of the Representation of the People Act, 1951 which left the respondents Nos. 1, 2 and 3 in the contest, Respondent No. 1 secured the highest number of votes and was declared returned. The petitioner sought a declaration of the election being wholly void on the ground of the improper rejection of his own nomination paper. In the petition he had made allegations about the failure of the respondents 1 and 5 to the lodging of their return of election expenses within the prescribed time and on that ground had sought their disqualification. Later, however, he accepted the position that the Election Commission had removed their disqualification and withdrew his allegation on that score.

2. The Returning Officer rejected the nomination paper of the petitioner due to certain defects pointed out by him in his order. The petitioner contends that these were quite unsubstantial and the rejection of his nomination had materially affected the result of the election rendering the election wholly void.

3. Despite the dissolution of the Pepsu Legislative Assembly by the President' Proclamation dated 4-3-1953 under Article 356 of the Constitution, the petitioner was not advised to withdraw the petition and insisted on maintaining it. This Tribunal, constituted of S. Mehar Singh as Chairman and S. B. Kartar Singh and Shri Jia Ram Sexena as members ruled by a majority on 20th April 1953, that his right to continue the petition is not affected by the proclamation. That order of the Tribunal is reproduced as annexure A.

4. The respondent No. 3 having lost in the election was interested in supporting the petitioner's prayer for avoiding the election and in para 8 of his written statement he put forward a new plea for such avoidance namely that declaration of the result of the election by the Returning Officer was illegal in as much as the Returning Officer (the Deputy Commissioner of Kapurthala) had not himself counted the votes in the ballot boxes but had got this done by his Assistant Commissioner.

5. Respondent No. 1 opposed the petition and contended that the petitioner's nomination was properly rejected. The respondent No. 5 also in opposing the petition further alleged that the petitioner himself had been disqualified under S. 7 of the R.P. Act, 1951 and as such he was not competent to maintain the election petition.

6. The following were the issues settled for trial:—

1. Whether the nomination paper of the petitioner was improperly rejected and if so had it materially affected the result of the election?
2. Is the petitioner not competent to file and proceed with the petition as he has been disqualified to be an elector by the Election Commission?
3. Whether the counting of votes was done by an unauthorised person and if so, is the declaration of the result of the elecation on that account wholly void?
4. Can respondent No. 3, S Suchet Singh raise the question of the voidability of the election as alleged by him in para 8 of his written statement?

7. *Issue II.*—The election Commission in Notification No. PP-A/52(II) dated New Delhi—1, May, 12, 1952, no doubt announced the Commission's decision that the petitioner S. Lachhman Singh having appointed himself to be his election agent had failed to lodge the return of election expenses within time and so incurred disqualification under clause (c) of S. 7 and S. 143 of the R.P. Act. Whether this petition which was presented prior to that notification would be rendered incompetent by reason of that disqualification need not however be considered because we find that in a subsequent notification No. PP-A/52(56) dated October, 19, 1952, the Commission has under S 144 of the Act removed this disqualification. The effect of this is that the disqualification should be deemed not to have been incurred at any time so as to affect the maintainability of the petition.

8. *Issues III & IV.*—We are of opinoon that in view of Section 80 of the R.P. Act, 1951 which lays down that no election shall we called in question except by an election petition presented in accordance with the provisions in Part II of the Act, the plea of respondent No. 3 on which these issues were raised, must be ruled out. The Respondent No. 3 sought by that plea to avoid the election on a ground which is not to be found in the election petition and which he has raised by his written

statement. He cannot be allowed to do this. If he wanted to avoid the election on that score, he should have presented his own election petition for the purpose. We need not determine issue No. III as we find on issue IV that respondent No. 3 is precluded from raising the question.

9. *Issue I.*—Issue No. I is, therefore, the only point which needs some serious consideration in this case. At the scrutiny of the petitioner's nomination which is in the form given in Schedule II under Rule 4 of the R.P. (Conduct of Election and Election Petitions), Rules, 1951, only two defects were noticed and urged before the Returning Officer, and in the order of rejection which we reproduce below, he considered these to be fatal.

> "On the scrutiny of this paper it was brought to my notice that the candidate deposited a sum of Rs. 250 as security for the Kapurthala Constituency seat of the Pepsu Legislative Assembly vide Cash receipt No. 17 dated 24th November, 1951 enclosed herewith, while the nomination has been filed for Dhilwan Constituency. The nomination paper does not comply with the provisions of Section 34 of the Representation of the People Act, 1951, and, therefore deserves rejection under sub-clause (d) of sub-section 20 (2) of Section 36 of the said Act. Moreover, the nomination papers does not disclose properly whether it is for the House of the People or for the Pepsu Legislative Assembly there having been no scoring of the inappropriate alternative. The nomination paper is, therefore, rejected on the above two grounds".

10. We cannot but think that rejection on these grounds was quite ill considered and improper. The petitioner's application for security deposit has been produced before us. The Petitioner did not say in it that he was making the deposit for Kapurthala Constituency. In fact he did not mention any constituency at all. The application only stated:

> "I am standing as a candidate for election to the Pepsu Legislative Assembly and am depositing rupees two hundred and fifty by way of security."

The petitioner made the deposit on the same day on which he presented the nomination paper to which he attached the receipt given by the Returning Officer for the deposit. The deposit was made as required by S. 34 of the R.P. Act, 1951 which does not lay down that the name of the constituency should be disclosed at the time of making the deposit. The office of the Returning Officer in the receipt issued, however, added the words "for Kapurthala constituency". Why Kapurthala Constituency was mentioned in the absence of any indication of it in the application is not explained and we can only conjecture that because the petitioner described himself as resident of Kapurthala town, the office seems to have assumed that he proposed to stand for the Kapurthala Constituency. The petitioner filed this nomination paper for Dhilwan Constituency and none for Kapurthala and quite innocently attached the receipt to the nomination paper. At the scrutiny when objection on the score of this discrepancy was taken, the petitioner, as the evidence shows, requested the Returning Officer to look into the application for deposit which was at hand in his own office to satisfy himself that his own office had committed the mistake in misdescribing the constituency. The Returning Officer was, however, in no mood to do this and from his manner, we can only infer that he thought himself justified in rejecting a nomination paper for even a trivial discrepancy or defect which may be noticeable on the face of the paper. He was apparently unmindful that in view of the provisions in sub-section (4) and (5) of S. 36 of the R.P. Act, in making the scrutiny, the law required him to perform a quasi-judicial function and not to be acting in an arbitrary manner, as he did. He was enjoined not to reject the nomination paper for any technical defect which was not of a substantial character and if he had any doubts, he could satisfy himself on the points by a summary enquiry.

11. In this case no enquiry as such was necessary because both the defects would have appeared on a little closer consideration of the nomination paper itself and upon a look into his own office papers, to be entirely unsubstantial and apparently very technical. If the words "House of People" were not deleted from the title of the nomination paper, that could not raise an inference that the nomination paper was for a Parliamentary seat. The name of the constituency was expressly mentioned as "Dhilwan" which was a State Assembly Constituency. The Returning Officer in this case (the Deputy Commissioner of Kapurthala) was also the Returning Officer for the Parliamentary Constituency of that area which

is known as Kapurthala-Bhatinda Constituency. With the name Dhilwan expressly mentioned and the security deposit of Rs. 250/- only as against Rs. 500/- required for a Parliamentary Seat election, no one could suppose the petitioner to have been seeking nomination in a Parliamentary Constituency because he had omitted to draw a line over the words "House of People". We unhesitatingly find that the Returning Officer's rejection of the nomination paper was on unsubstantial grounds and so improper.

12. Though in the written statement, the respondent No. 1 was content to defend the order of rejection on the grounds by the Returning Officer, at a later stage of the trial, he sought to sustain the propriety of rejection by reference to a new ground which the tribunal allowed him to do. He now averred that the petitioner had failed to make any appointment of an election agent and in the absence of this, the nomination paper would be regarded as incomplete and could be rejected on that ground, S.40 of the R.P. Act contains the following mandatory provision about appointment of election agents:—

"(1) Every person nominated as a candidate at an election shall before the delivery of his nomination paper under sub-section (1) of Section 33.....appoint in writing either himself or some one oth person to be his election agent.

(2) When a candidate appoints some person other than himself to be his election agent, he shall obtain in writing the acceptance by such person of the office of such election agent."

13. No separate writing is required to be given about such appointment but the making of it is to be indicated by signing a declaration contained in the form of the nomination paper itself. The printed part of the declaration in question is as under:—

"Appointment of Election Agent.

I hereby declare that I have $\frac{\text{appointed}}{\text{myself}}$ .....son of ..... of ..... $\frac{\text{to be my}}{\text{as my}}$ election agent.

Date.....

Signature of candidate."

14. It is undisputed that the petitioner did not intend to make appointment of any other person than himself as his election agent. The petitioner accordingly states that in the nomination paper he indicated the appointment by scoring out the words "son of", "of", "to be my". In the application dated 12th November 1952 seeking permission to raise this additional ground, the respondent No. 1 pointed out that in the declaration even the words "myself" and "as my" had been scored out by lines drawn over them, signifying thereby that the petitioner had failed to indicate even appointment of himself as his election agent. On behalf of the petitioner it is conceded that if at the time when the nomination paper was presented and scrutinized, the words "myself" and "as my" had been scored out too, it might be inferred that no appointment of election agent had been made and the nomination would be bad for that reason. It has, however, been strenuously contended that the scoring of these words has been mischieviously done now in order to make this new ground of attack. The crucial point for determination accordingly is, whether these words "myself", and "as my" had also been scored out by the petitioner.

15. The original nomination paper is Ex. P. 3. In this ink and pen used for scoring the words above the line which the petitioner admits having himself scored, appears to be the same with which signature of the candidate and the date have been written. The lines scoring the words "myself" and "as my" appear to be drawn with a thicker pen and lighter ink. This is visible to the naked eye and the members of the tribunal when they were requested to keep a note of scrutiny of the document on record unanimously recorded their impression of the scoring two sets of words appearing to have been done with ink of different colours and with different pens. The existence of this difference is confirmed also by the opinion of the Hand Writing Expert, Shri K. S. Puri, who subjected the document to a systematic and detailed examination and who has stated very clear and convincing reasons for his opinion. The difference is quite marked and patent and is incapable of being explained away by such conjectures as more ink and light pressure having been put on the pen in scoring out the words above the

line and less ink and more pressure having been applied in scoring these below the line. We have no doubt that the two sets were scored out at different sittings and so both scorings could not be done by the petitioner himself.

16. We have also the evidence of the Returning Officer, S. Sant Partap Singh, P.W.8 that at the time of the scrutiny of the nomination papers, this defect in the declaration of election agent had not been noticed by him nor referred to by any person. When we find that the Returning Officer was so meticulous in his scrutiny as to look for trivial omissions of scoring inappropriate words he would not have failed to make note of such glaring defect in the declaration of election agent if it had been present in this form at the time. S. Ajit Singh Sarhadi, P.W. 12 as Advocate for respondent No. 2 had taken inspection of all the nomination papers of the candidates in order to raising objections on behalf of his client at the time of scrutiny. He also states that he did not notice any thing objectionable in the declaration about appointment of election agent and the defects noticed by him were only the two which have been referred to in the order of the Returning Officer. On the evidence of these two disinterested witnesses of undoubted integrity, we find that the nomination paper did not have any such defect at the time of scrutiny and could not have been rejected on any such ground as now urged by respondent No. 1. We have no material to come to a finding as to when after that scrutiny the words below the line must have been scored and who may have done it. Such a finding is not necessary also for disposal of the election petition.

17. With the election petition the petitioner filed a copy of the nomination paper (copy marked Ex.P-1) which was obtained on 5th March, 1953. In this copy which is prepared by using a printed form of nomination paper none of the words above or below the line in the declaration of appointment of election agent has been scored out. The copyist and the comparer concerned in the preparation of the copy in the Deputy Commissioner's office have been called as witnesses on behalf of the respondent to say that the words were not scored in the copy because they were not scored in the original at the time the copy was prepared. We do not think anything is to be made of this evidence when it is no party's case that no words in the declaration had been scored out at all.

18. We accordingly find that the petitioner's nomination was improperly rejected. Upon such finding there arises a strong presumption that the improper rejection had materially affected the result of the election. There is nothing before us to rebut such presumption and we find according to the presumption that the result of the election would have been materially affected if the petitioner had been allowed to be in the contest.

19. The petitioner is, therefore, entitled to the declaration that the election in Dhilwan Constituency of the Pepsu Legislative Assembly in January, 1952, was wholly void and we hereby make such declaration. As for the costs ordinarily in such a case irrespective of the petitioner's success, we would not think of awarding him costs against the opposing respondent because the necessity for making the petition was due to improper order of the Returning Officer for which the respondent could not be burdened with costs. In the present case the respondent No. 1 must, however, be held responsible for protracting the trial by raising the additional plea without adequate reason which required the petitioner to incur extra costs of producing evidence of Hand Writing Expert and other witnesses to meet it. To that extent we think the respondent No. 1 should be made to pay the petitioner's costs. We take into consideration that respondent No. 1 was made to pay Rs. 100/- as costs as a condition precedent to his having been permitted to raise the additional plea. We think the petitioner will be adequately compensated by payment of Rs. 200/- more. We accordingly order the respondent No. 1, S. Basawa Singh to pay Rs. 200/- as costs to the petitioner.

(Sd.) V. B. SARWATE, *Chairman.*

(Sd.) JIA RAM SAXENA, *Member.*

The 30th June 1953.

(Sd.) KARTAR SINGH, *Member.*

ANNEXURE A

BEFORE THE ELECTION TRIBUNAL AT KAPURTHALA

ELECTION PETITION NO. 103 OF 1952

S. Joginder Singh *Vs.* Harchand Singh, Respondent No. 1 and 13 others

JUDGMENT

In this election petition No 103 of 1952 an application has been made by the contesting respondent that in view of the dissolution of the Legislative Assembly of the State the petition has become infructuous. This application is resisted by the petitioner. In seven other election petitions Nos. 80, 160, 167, 197, 202, 204 and 213 of 1952 similar question arises. And in fact two other election petitions Nos. 160 and 204 of 1952 the contesting respondents have made similar application. In the case of petition No. 204 the petitioner acquiesces in the application and says that it is now futile to prosecute the petition.

In view of the common question involved in all the eight petitions reference is made to them for the sake of convenience, though this judgment directly concerns election petition No. 103 of 1952. In election petitions Nos. 103, 167, 197, and 204 the claim of each petitioner is that the election be declared wholly void. I election petitions Nos. 160 and 213 the claim of each petitioner is that the electio of the returned candidate be declared void. In election petition No. 202 the petitioner claims declaration that the election is wholly void or the election of the returned candidate is void. In Election No. 80 the petitioner claims declaration that the election is wholly void or the election of the returned candidate is void and he himself has been duly elected, but the original petitioner withdrew and in his place S. Kaur Singh has been substituted as a petitioner. In election petitions Nos. 160, 197, 202 and 213 corrupt or illegal practices have been alleged, and in the remaining four election petitions Nos. 80, 103, 167, and 204 no corrupt or illegal practices have been alleged.

The President of India, by a Proclamation published in the Gazette of India, dated 4th March, 1953, in pursuance of Article 356 of the Constitution of India (a) assumed to himself all functions of the Government of the State of Patiala and East Punjab States Union (hereinafter to be referred as 'the State') and all powers vested in or exercisable by the Rajpramukh of the State; (b) declared that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament; and (c) in making incidental and consequential provisions for giving effect to the objects of the Proclamation, dissolved the Legislative Assembly of the State.

Article 170(1) of the Constitution provides that the Legislative Assembly of each State shall be composed of members chosen by direct election. Article 172(1) lays down that "every Legislative Assembly of every State, unless sooner dissolved, shall continue for five years from the date appointed for its meeting and no longer and the expiration of the said period of five years shall operate as a dissolution of the Assembly". And under Article 174(2)(c) the Rajpramukh may dissolve the Legislative Assembly. Section 16(2) of the Representation of the People Act, 1951 (hereinafter to be referred as 'the Act'), provides that "a general election shall also be held on the expiration of the duration of the Assembly or on its dissolution in order that a new Assembly may be constituted". The existence of a Legislative Assembly is thus terminated either by efflux of time or by a proclamation of dissolution: and a new Assembly can only be constituted by a general election after dissolution returning members chosen by direct election. So the dissolution of an Assembly is the termination of the existence. This is also supported by May's Parliamentary Practice, page 34, where it is stated that a dissolution closes the existence of Parliament. In Anson's Law and Custom of the Constitution, Vol. 1, 4th Edn., page 70, it is remarked that "a dissolution brings the existence of Parliament to an end". In Halsbury's Laws of England, Vol. 6, 2nd Edn., page 64, it is stated that "except in the case of effluxion of time, an existing Parliament can only be put an end to by the exercise of the royal prerogative (dissolving it)". Thus there is no doubt that once the Assembly is dissolved that is the end of its existence.

In Section 2(1) (d) of the Act "election" is defined to mean "an election to fill a seat or seats .... in the House..... .. ..of the Legislature of a State". An election can be called into question by an election petition only (S. 80 of the Act) and the petitioner may claim a declaration (a) that the election of the returned candidate is void (and may in addition claim himself or any other candidate to have been duly elected) or (b) that the election is wholly void (S. 84 of the Act): of course he may claim more declarations than one in the alternative.

In Section 84 of the Act the declaration that a petitioner may claim is that the election is void, which means that the petitioner may claim declaration avoiding a subsisting election. According to section 98 of the Act at the conclusion of the trial of an election petition the Tribunal shall make an order (a) dismissing the election petition; or (b) making one of the declarations as enumerated in section 84 of the Act. If the Tribunal does not dismiss the election petition then its order has to be either declaring the election of the returned candidate to be void or declaring the election to be wholly void. The verb 'be' means to exist'. So when making a declaration under section 98 of the Act the Tribunal has to declare an existing and subsisting election as void. The use of the verb 'to be' in section 98 of the Act excludes the possibility of the Tribunal making a declaration that the election was void, the order making the declaration has to state that an existing election is void.

The effect of a declaration avoiding an election is (a) to cause a vacancy of a seat in the Assembly, and (b) to result in a bye-election to fill the seat in the Assembly (S. 150 of the Act). The Assembly having been dissolved any such declaration in an election petition would manifestly be ineffective and futile because there being no Assembly in existence there is no existing election that can be declared void resulting in a vacancy of the seat in the Assembly and a consequent bye-election to fill that seat in the Assembly. Any such declaration would be a declaration not that the election is void but that it was void, and such a declaration, on plain reading of section 98 of the Act, cannot be made. Therefore, after the dissolution of the Assembly a declaration avoiding a non-existent election cannot be made in the terms of section 98 of the Act, and even if such a declaration is made in the terms of that section it would be in-effective and barren. It is well recognised principle of law that no court shall pass an infructuous and in-effective decree a decree which cannot be enforced. It will not grant a declaration which would be barren and—as observed by their Lordship of the Privy Council in 39 Madras 634, at Page 638,—'would be stamped with something in the nature of futility'.

It is urged on the side of the petitioner that the election petitions have to be tried according to the law applicable at the time of their institution. In 1925 Nagpore 104, pages 106 and 107, it has been observed that the general rule is that a suit must be tried in all its stages on the cause of action as it existed at the date of its commencement, but the power of a court of appeal to take cognizance of facts which have happened since the date of judgment of the court below has been widely recognised and it may sometimes be the duty of a court of appeal to take notice of events which have happened during the pendency of the appeal since the exercise of such powers is necessary, as otherwise the Court might decide matters no longer in controversy or deliver judgment which could not be carried into effect and could not in any manner affect the matter in issue in the case before it. The Tribunal is, therefore, duty bound to take notice of the fact of the dissolution of the Assembly and to stay its hands in granting in-effective and barren declaration.

It has already been pointed out that the granting of one of the declarations in clauses (b), (c) and (d) of section 98 of the Act is not possible in the terms of those clauses and if any declaration is granted it would be in-effective and barren. An order under clause (a) of section 98 of the Act dismissing the election petition 'at the conclusion of the trial' cannot be made because before the conclusion of the trial the election petitions have become infructuous. Consequently no order under section 98 is practical or can be made. The Act is silent as regards the consequences of the dissolution of an Assembly upon an election petition. Salmond in his Jurisprudence, 10th Ed., at pages 167 and 168, observes that "codification must not be understood to involve the total abolition of precedent as a source of law. Case law will continue to grow, even when the codes are complete. In the most carefully prepared codes subtle ambiguities will come to light, real or apparent inconsistence will become manifest, and omissions will reveal themselves. No legislative skill can affectually anticipate the complexity and variety of the facts. The function of precedent will be to supplement, to interpret, to reconcile, and to develop the principles which the code contains." There is, as stated, no provision in the Act dealing with the effect of dissolution upon the election petition. A similar case arose in England and is reported in Law Reports 9 Common Pleas 117 Carter V. Mills, in which Lord Coleridge, C. J., observed: "The Queen having been pleased to dissolve Parliament, of which fact the court must take judicial cognizance, a case has arisen not expressly provided for in the Act; and under these circumstances we must guide our proceedings by the old Parliamentary practice on the subject. It is common knowledge, that according to the old practice the petition abated or dropped in such a case." And Keating, J, observed;

"the effect of the dissolution, as it seems to me, is, to cause the petition to drop." The use of the word 'abate' in Carter *Vs.* Mills was, during the arguments, criticised in Marshall *Vs.* James Law Reports 9 Common Pleas. 702, at page 706, and it was urged that "the word 'abatment' is inadvertently used with reference to the dissolution of parliament. but in strictness it is wholly inapplicable." Lord Coleridge, C. J., when delivering judgment in this case made reference to Carter V. Mills, at page 715, and did not again use the word 'abate', but observed: "We were justified in saying that the petition dropped by reason of the dissolution of parliament." Time of the case Carter *Vs.* Mills the Parliamentary Election Act, 1868, was in force in England and the case of dissolution was not, as is not the case here, expressly provided for in the Act. All the election petitions, therefore, drop because of the dissolution of the Assembly since the moment the dissolution took place the petitions were at an end for all purposes having become infructous

S. Joginder Singh petitioner in election petition No. 103 claims declaration that the election of the successful candidate from Banur constituency is wholly void on the ground that his nomination paper was improperly rejected by the Returning Officer holding that he was not a 'bona' Sikh, and thus not a member of scheduled castes. He claims that since he is a 'bona' Sikh and a member of the scheluded castes he had a right to contest the election. S. Ajit Singh Sirhadi has on his behalf contended that having regard to the definition of "election" in section 2(1) (d) of the Act S Joginder Singh had a right to fill a seat in the Assembly being a member of scheduled castes, and he was deprived of this right by the decision of the Returning Officer on the ground that he was not a member of the scheduled castes. Therefore, the petitioner is entitled to a declaration that since he is a 'bona' Sikh and a member of the schcluded castes he had a right to contest the election from the reserved seat of Banur constituency. An election petition under section 80 of the Act is competent to question an election only; and no petition lies for a declaration that a particular person is or is not a member of a particular scheduled caste. It has been pointed out that the declaration claimed by the petitioner having become infructuous and the petition having dropped because of the dissolution of the Assembly a barren and a futile declaration that the election from the Banur Constituency was wholly void and cannot be made. There is nothing in the Act to justify that even in such circumstances the petitioner in this case can still be given a declaration about his caste, which declaration would not be in the terms of section 98 of the Act. In fact section 80 of the Act clearly shows that no such declaration can be claimed independently of questioning the election and claiming any one of the declarations enumerated in section 80 of the Act. The Tribunal, therefore, cannot give the petitioner a declaration under any provision of the Act that he is a member of a particular scheduled caste. As stated no petition lies for such a declaration.

We have had the benefit of hearing the learned Advocate General on the question under consideration. He is of the opinion that the election petitions, whether or not corrupt or illegal practices have been alleged, do not become infructuous because of the dissolution of the Assembly. He has advanced two main reasons in particular in support of this opinion. Those reasons are (a) that the President may in exercise of the powers under Article 356(2) of the Constitution so revoke or very the proclamation as to restore the dissolved Assembly and direct that it be summoned to meet the transact business, in which case members whose election returns have been questioned by the petitions shall continue to sit in the House when their elections ought to be declared void disentitling them to the seats in the Assembly, and (b) that an election petition is not proceeding as an ordinary lis, or section between individuals, but being of public interest is the assertion of a right in rem, a right to set aside an undue return; and therefore the petitions do not become infructuous by the dissolution of the Assembly.

It is at once clear that the first reason seems to involve a conflict of conceptions; it means that the existence of the Assembly is at an end by reason of dissolution, and at the same time its existence is not so at an end that it may be possible to infuse life into it. A dissolution, whether by efflux of time or by proclamation, of any Assembly puts an end to its existence; and its demise likens to that of a living being, that is, the end is for once and good, there being never a possibility of return to life.

The President has undoubtedly power to revoke or very the proclamation by a subsequent proclamation. In the case of revocation of the proclamation the suspended Articles of the Constitution immediately came back into force and take effect with the imperative consequence that, the Assembly having been already dissolved, the new Assembly must be composed of members chosen by direct elec-

tion at a general election having regard to Article 170(1) of the Constitution and section 16(2) of the Act. There is no provision in the Constitution or in the Act for a recall or resummoning of a dissolved Assembly. So that in the case of a revocation of the proclamation the President has absolutely no power to restore to life the dissolved Assembly. If while revoking the proclamation the President should direct that the dissolved Assembly be summoned to meet, that would not be a proclamation revoking the original proclamation simpliciter but would also be an affirmative proclamation resummoning the dissolved Assembly, and this would amount to not a mere revocation of the original proclamation but something in the nature of a variation of it. The question of the variation of the proclamation by the President will be considered immidiately next, but for the present this much is uncontrovertibly certain that pure and simple revocation of the original proclamation will atonce bring into force the suspended Articles of the Constitution and then the Assembly having been already dissolved there is one and one way only whereby a new Assembly can be constituted and that is by a general election according to law.

The President, while assuming to himself the functions of the Government of the State and the powers vested in or exercisable by the Governor or Rajpuramukh, is expressly barred from assuming the same as regards the Legislature of the State according to Article 356(1) (a) of the Constitution. He may only declare that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament according to clause (b) of sub-article (1) of the said Article. In view of the express provision in this clause that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament, the President has no authority under Article 356 of the Constitution to vest those powers in any other body or authority except Parliament. The matter of significance is that he cannot assume to himself the authority and the powers of the Legislature of the State under this Article. If, while varying the original proclamation the President summons the dissolved Assembly to meet, the object will only be that it will meet to function as the Legislature of the State. It is not denied by the learned Advocate General that the dissolution of the Assembly is constitutional and valid, with the result that existence of the Assembly has ended. Should the President resummon an Assembly of which the existence has ended it will not be a representative Assembly of which the members have been chosen by direct election, it will be just an assemblage of a certain number of persons who were once elected to a lawfully constituted Assembly under the Constitution, and it will be no more. After such an assemblage has met, the President will have no power to invest it with the authority and powers of the Legislature of the State because that he can only do in regard to Parliament. There would be no idea in gathering such an assemblage to which no authority or powers of the legislature could be given. It has to be kept in mind that the Government of the State, in such a contingency, will still be carried on under Article 356 of the Constitution. The result will be that the President will have to provide practically a new Constitution defining the powers and functions of such an assemblage, and it is thus evident that it would not be the same Legislative Assembly as before dissolution. Therefore it is a matter of no consequence whether with regard to the members of such an assemblage the present petitions should drop or be continued. The conclusion is that by a variation of the proclamation it is not within the powers of the President to recall and resummon a dissolved Assembly as if it was the existing and continuing Legislative of the State Therefore, the President has no power under Article 356 of the Constitution, whether at the time of revoking or varying the first proclamation, to resummon the dissolved Assembly of the State and to make it function as the Legislature of the State in the same sense as it functioned before its dissolution. Such a thing, if it may be so said, is a constitutional impossibility.

No doubt proceeding in an election petition is not as in ordinary suit between individuals, all the same it is a proceeding to set aside an undue return: and in so far as the present petitions are concerned, all such returns have been set at naught by the dissolution of the Assembly. There can be no question of setting aside any return of election after dissolution of the Assembly, and it is not clear what public interest will be served by the pursuit of these election petitions when the sole benfit that was to be derived from their success has already accrued to the petitioners. No declaration can be given to any petitioner that is not within the exact terms of section 98 of the Act and because of the dissolution of the Assembly no effective or fructuous declaration or order is possible under that section. It has not been stated with any clarity that public interest would be served in the continuance of the petitions.

The learned Advocate General is of the opinion that there is no distinction, in so far as the question under consideration is concerned, in the petitions in

which no corrupt or illegal practices are alleged and those in which the same are alleged. Indeed the other counsel in the petitions also have taken the same stand. Everybody is agreed that election petitions of both types either become infructuous or they do not because of the dissolution of the Assembly and that the same consideration will apply to both types of petitions. However, at one time, during the arguments, it was mooted that the election petitions in which corrupt or illegal practices have been alleged stand on a different footing. The argument was that in such election petitions the Tribunal has to give a finding under section 99 of the Act whether any corrupt or illegal practice has or has not been proved to have been committed and name the persons committing the same so that such persons may be visited by disqualification according to section 141 (b) of the Act. An order under section 99 of the Act is to be made at the time of making an order under section 98. It has already been shown that because of the dissolution of the Assembly no order can be made under section 98 of the Act. The learned Advocate General agrees that an order something like this cannot be made: "the granting of any one of the declaration under section 98 of the Act is barren and infructuous, but at the same time the Tribunal finds that so and so has committed such and such illegal or corrupt practice." The person is quite simple: it is that no election petition under section 80 of the Act, without questioning the election and claiming any one of the declaration as enumerated in section 84 and as can be granted under section 98 of the Act, is competent as an independent complaint as regards the commission of corrupt or illegal practices. If such an independent complaint was competent under the Act then it would be open to the Tribunal to drop the in-effective and infructuous declaration claimed in the petition and to proceed to the trial of such a complaint. But no such independent complaint is competent under section 80, or the subsequent sections, of the Act. A petition only lies to question an election and while making an order at the conclusion of the trial of such a petition, the tribunal is to make an order under section 99 of the Act. It has no power to make any order under that section while not making an order under section 98 of the Act. If that is done it would clearly mean that an election petition is competent as regards the commission of corrupt and illegal practices without challenging the election; and there is no provision in support of such a petition in the Act. It is stressed that the public life must be purged of persons indulging in corrupt and illegal practices at election. There can be no two opinions over this, but the Election Tribunal when dealing with an election petition can take cognizance of the commission of corrupt and illegal practices in a certain defined way and in no other way. It cannot treat an otherwise in-effective and barren election petition as a sort of a complaint against persons alleged to have committed corrupt or illegal practices. As pointed out no such independent complaint can be made against any person to the Election Tribunal under the Act. The learned counsel concerned in these petitions and the learned Advocate General have, therefore, been right in urging that as far as the question under consideration matters there is really no distinction between the petitions in which corrupt or illegal practices have been alleged and those in which no such allegations have been made.

The consideration of the two chief reasons advanced by the learned Advocate General has not supported the opinion that the election petitions have not become infructuous and in-effective because of the dissolution of the Assembly. It has already been shown that the granting of the declarations claimed by the petitioners in their election petitions would be entirely barren because the effects that were to be the result of the grant of such declarations will not be brought about or rather it has become impossible to achieve those effects.

There are only two recent decisions of the Tribunals that have been referred to during the arguments. They are, in my opinion, really not relevant to the present discussion, though they appear to have some resemblance to the question. The first case is reported in the *Gazette of India Extraordinary* Part I—Section 1, 29th October, 1952, page 2353, Shri Kheota V Shri Dapram Singh and others, and in it the successful candidate resigned from his seat during the pendency of the election petition, whereupon the Tribunal observed: "in the above circumstances, the petition has become infructuous. No further proceedings can be had in the petition. It is, therefore, directed that the file shall be consigned to the record room." This would appear to take not a different view than that taken above. The other case is reported in the *Gazette of India Extraordinary*, Part I—Section 1, 4th December, 1952, election petition No. 26 of 1952, Nurul Aslam of town Nowgong V Mohammed Rafiq and others, page 2507, at page 2509, in which the petitioner claimed declaration that the election of the returned candidate was void and that he himself had been duly elected. The returned candidate resigned during the pendency of the petition.

It is obvious that by resigning his seat the returned candidate could not nullify the petitioner's claim that he had been duly elected. This is the Chief substantial reason upon which the argument that the petition had become infructuous was rightly rejected. In such circumstances the petition does not become in-effective or infructuous. Any other reason that the Tribunal has given for maintaining that the petition has not become infructuous is obviously *obiter*. Therefore, this case is no guidance for the question involved in the present petitions.

The result is that by the dissolution of the Assembly a situation has arisen not provided for in the Act. The granting of the declaration as claimed by the petitioner S. Joginder Singh in election petition No. 103 of 1952 would be barren and in-effective. No purpose whatever would be served by such a declaration. The effectiveness of such a declaration has become an impossibility. The petition cannot be dismissed under Section 98(a) of the Act because the same has become infructuous long before the conclusion of the trial. No order under section 98 of the Act can be made. The petition because of the dissolution of the Assembly drops and has become infructuous. No further proceeding can be taken in it and I would, therefore, order that it be consigned to the record room.

(Sd.) MEHAR SINGH, *Chairman.*

The 20th April 1953.

The contesting respondent S Harchand Singh presented an application on the 10th of March, 1953, praying that in view of the Proclamation issued by President of India, dated the 4th of March, 1953 ordering *inter alia* dissolution of Pepsu Legislative Assembly, the position against him should be held to be infructuous and further proceedings should, therefore, stop.

The petitioner, however, has opposed the application. It has been urged on his behalf that although he was a member of the scheduled castes, his nomination paper has been wrongly rejected, and that the wrong done to him can be set right only by this Tribunal and by no other forum.

In view of the public importance of the question involved, and in the absence of any clear provision either in the Representation of the People Act, 1951, the Constitution of India or the Proclamation issued, we had to requisition the services of the learned Advocate General of the State to help us in arriving at a correct legal conclusion. We had the advantage of hearing him at length and also the learned counsel of the parties. The learned Advocate General vehmently stressed the view that the petition has not become infructuous and that this Tribunal was under a statutory obligation to go or with the trial, while the counsel for the contesting respondent stuck to the view that these proceedings have become futile and must be dropped.

In order to appreciate the arguments of both the sides, it is necessary to refer to the Proclamation in question, the relevant articles of the Constitution of India and the various relevant provisions of the Representation of the People Act of 1951 (hereinafter referred to as the Act).

The Proclamation referred to above was promulgated under the powers conferred on the President under Article 356 of the Constitution of India. The Proclamation orders *inter alia* that the Legislative Assembly of Pepsu be dissloved and that the operation of certain provisions of the Constitution in relation to that State, as specified therein, be suspended. It may be pointed out that the suspended provisions of the Constitution do not affect the powers of the Election Commission relating to the appointment of Election Tribunal for this State, for the decision of doubts and disputes arising out of, or in connection with, elections to the Legislature of this State, as laid down in Article 324(1) of the Constitution of India. Nor do they nullify the action taken by the Election Commission under this Article. Nor do the suspended provisions interfere with the powers of this Tribunal as provided in the Act, regarding the trial and disposal of the election petitions. They do not even set at naught any declaration in respect of the election of a returned candidate published in the official Gazette under Section 67 of the Act. It is to be borne in mind that it is such a declaration which gives rise to the cause of action for filing an election petition under section 81 of the Act, as the time within which an election petition can be presented commences from the date of the publication of the name of a returned candidate under Rule 119 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951; and the declaration remains intact unless and until it is set aside under section 98 of the Act. It is important to point out that the Proclamation does not avoid such a declaration.

It is an incontrovertible proposition of law that an authority which has the power to enact a law on certain matters, has also the power to repeal or amend it and Article 327 of the Constitution of India specially provides that subject to the provisions of the Constitution, Parliament may from time to time by law make provisions with respect to all matters relating to, or in connection with, elections to either House of the Legislature of a State. The Parliament has not thought fit to pass a law amending the provisions of the Representation of the People Act in order to terminate the pending election cases in Pepsu. Such a power of the Parliament remains unaffected by the Proclamation and if exercised would have cleared up the matter beyond doubt.

It is to be observed that power to dissolve a Legislature as provided in the Constitution of India falls under two categories, (i) ordinary dissolution, as expressly provided for in the Constitution and (ii) extraordinary dissolution, as ordered by the President in the exercise of his emergency powers on the failure of the Constitutional machinery under Part XVIII of the Constitution. A Governor or a Rajpramukh of a State, specified in Part B of the first Schedule of the Constitution of India has the power to dissolve a legislature, but no power has been reserved in the Constitution, authorising him to revoke or vary such an order. On the other hand, Article 356 clause (2) of the Constitution clearly arms the President with the power to revoke or vary a Proclamation by a subsequent Proclamation. Nothing, therefore, stands in the way of the President to revoke or vary his Proclamation of the 4th of March, 1953 at any time in his discretion. If he chooses to exercise such a power at any time, the necessary result would be that the dissolved Legislature of the State will come to life again, and in such a contingency, the summary rejection of election petitions at this stage will deprive petitioner of a valuable legal right which cannot subsequently be agitated in any other forum *vide* Article 329(b) of the Constitution. It is not to be forgotten that the powers of this Tribunal to try and decide the points involved in the petitions before us have been left untouched. The Representation of the People Act does not confer any power on this Tribunal to terminate, drop or consign to the Record Room these proceedings at any time. Rather it is laid down in section 98 of the Act that it is only at the conclusion of a trial that a Tribunal is to make an order in one of four particular manners, specified therein in order to decide a petition. We are of the opinion that we have no power to pass any order, not specified in section 98 of the Act.

Section 98 of the Act is to be read along with Section 99. It is incumbent on a Tribunal to pass an order recording—

(i) a finding whether any corrupt or illegal practice has or has not been proved to have been committed by, or with the connivance of any candidate or his agent at the election, and the nature of that corrupt or illegal practice; and

(ii) the names of all persons, if any, who have been proved at the trial to have been guilty of any corrupt or illegal practice and the nature of that practice together with any such recommendations as the Tribunal may think proper to make for the exemption of such persons from any disqualifications which they may have incurred in this connection under sections 141 to 143.

The Tribunal is also duty bound to pass an order as to costs, specifying the persons by whom and to whom the costs are to be paid. The petitions in which illegal and major corrupt practices and serious irregularities in the rejection of nomination papers have been alleged and from the subject matter of issues, cannot be left undecided, because no relief is possible without a finding on the issues involved. Provisions of Section 99 of the Act are imperative in nature. In petitions in which it is alleged that a certain person is guilty of committing corrupt or illegal practices, it would be injustice to refuse to go into the question, for it would tantamount to ignoring the provisions of Section 99 and thus let the guilty persons escape from the punishment in the form of disqualifications as provided in the Act.

The learned counsel for the respondent has relied on Section 16(2) of the Act in support of his argument that every dissolution of an Assembly must be followed by a general election. He means to build up an argument that the President has no power, after dissolving the Assembly to bring it to life again. Obviously he forgets the provisions of Article 356(2) of the Constitution, discussed above. Section 16(2) of the Act, in our view, refers to ordinary kinds of orders of dissolution of Assemblies, which are expressly

provided for in the law, and are irrevocable, and not to extraordinary orders of dissolution of an Assembly expressly subject to revocation and variation by the President. Moreover if any provision contrary to the provision of the Constitution exist in the R.P. Act, it cannot be allowed to over ride the Constitution. The R.P. Act has been brought into existence by virtue of the provisions of Article 327 of the Constitution, which expressly provides that any Act made by the Parliament with respect to all matters relating to or in connection with, elections of either House of Parliament or to the House or either House of the Legislature of a State shall be subject to the provisions of the Constitution

Before concluding our discussion we think it proper to refer to the three important authorities cited at the bar. The English authority reported in Law Reporters (1874) Common Pleas at page 117 (Carter *Vs.* Mills) has no bearing on this case, because there is no provision in the English Law, authorising the King to revoke or vary an order dissolving Parliament, as we find in our Constitution discussed above.

In this authority it is observed that the proceedings should abate by reason of the dissolution of the Parliament. On the other hand there is a clear provision in Section 112 of the Act by which this Tribunal is bound, in which it has been laid down that an election petition shall abate only in one case, *viz.* the death of a sole petitioner or of the survivor of several petitioners. Therefore no order of abatement can be passed in this case or in other similar cases, pending before us. It has been further argued that the Tribunal may order that these proceedings should be dropped, and not that they should abate. Now the word abatement implies that a case has come to an end, and in our view the word 'drop' practically means the same thing. No law can be evaded by change of words, if the legal effect remains the same.

Of the two Indian Decisions, relied on, the first is reported at page 2353 of the *Gazette of India Extraordinary* Part I—Section 1, Volume No. 447 dated 29th October, 1952, Shri Kheota Petitioner *Vs.* Shri Daparam Singh respondent. In this case Shri Dapram Singh had submitted his resignation of his seat on the Assembly and also notified to the Tribunal that his resignation was accepted and a notification referring to the resignation of Shri Dapram Singh Respondent and his having ceased to be a member of the Assembly was published in the Gazette. The Election Tribunal of Himachal Pradesh directed in the above circumstances that the petition having become infructuous, no further proceedings could be had in the petition and that therefore the file should be consigned to the Record Room of the District Judge. The decision does not disclose on what grounds the Petitioner in that case questioned the election. We do not know whether any corrupt or illegal practices were alleged or not. The short decision does not refer to any provision of the law under which the Tribunal passed the above order. In fact the legal position is not discussed at all. In the case the powers of revocation or variation or the order of dissolution of the State Assembly are reserved to the President, who may exercise them at any moment, while in the case cited above the position was quite different, the acceptance of resignation having become final, and only a bye-election was to take place. There is no conceivable analogy in these two cases. We may observe that an order consigning a file to the Record Room is not warranted by any rule of law or procedure.

That last authority reported at page 2507 of the *Gazette of India Extraordinary*, Volume No. 481 dated 4th December, 1952 was relied on by the learned Advocate-General. In this case, too, the contesting Respondent had resigned the seat, and the question arose as to whether the election petition was maintainable by reason of Respondent having resigned his seat. This question of Respondent having resigned his seat. This question formed the subject matter of issue No. 1. We quote below with approval the reasoning adopted in this decision:—

> "Issue No. 1 was first taken up on the prayer of the Respondent for consideration and the objection taken by the respondent on this account was over ruled by us, as per the order No. 17, dated 30th October, 1952, recorded in the order-sheet of the case. As voted in our above order, it had been urged on behalf of the respondent that the returned candidate having resigned his seat, the same has fallen vacant, as under Article 190(3) (b) of the Constitution of India, and the only thing open now is a by-election to fill in the seat, and the election petition, as it is before the Tribunal, is not maintainable in law. We rejected this contention substantially on the ground that the election petition calling in question the

election of the returned candidate, having in this case been presented to the Election Commission duly and the same having been accepted by them, and this having since been referred to an Election Tribunal, constituted for the purpose, for its decision, there now rested a statutory obligation on the Tribunal to give a decision with regard to the election petition on its merits, irrespective of the fact that the candidate, whose election has been called in question here, has since resigned. The further fact that carried weight with us was that in the present case, the petitioner had not merely asked for the relief of having a declaration that the election of the returned candidate was void, but his further claim was that he had, in fact been duly elected to the seat of the Constituency by a majority of valid votes. This claim as made by the petitioner in his election petition, was left unaffected by the resignation of the seat, of the returned candidate. We overruled this preliminary objection taken by the respondent for the above reasons."

For the foregoing reasons we hold that this petition has not become infructuous and cannot be dropped or consigned to the Record Room. The application of the Respondent is, therefore, disallowed.

Similar question has arisen in Petitions Nos. 80, 160, 167, 202 and 213 of 1952 and our finding thereon is the same. Copies of the above order to be placed on each of the files of the above cases.

The 20th April 1953.

(Sd.) KARTAR SINGH, *Member.*

(Sd.) JIA RAM SAXENA, *Member.*

ORDER

In the view taken by the majority of the Tribunal, the application of the respondent is disallowed, as the petition has not become infructuous. A copy of the order be filed with each one of the other seven election petitions.

The 20th April 1953.

(Sd.) MEHAR SINGH, *Chairman,*

(Sd.) KARTAR SINGH, *Member.*

(Sd.) JIA RAM SAXENA, *Member.*

[No. 19/204/52-Elec.III/11310.]

By order,

P. R. KRISHNASWAMY, Asstt. Secy.

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